7-0400-8214-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF AGRICULTURE

In the Matter of the Claim
by Daniel and Darcie Lidberg
Against the Surety Bond of
Minneapolis Van and Warehouse
Company, Principal and United
Fire & Casualty Company, Surety.

FINDINGS OF FACT,
CONCLUSIONS_AND
RECOMMENDATION

The above-entitled matter came on for hearing in Minneapolis before Administrative Law Judge Richard C. Luis on September 23, 1993.

Daniel Lidberg and Darcie Lidberg (Lidbergs), 938 - 98th Avenue North, Blaine, Minnesota 55434, appeared as Claimants on their own behalf; Paul A. Strandberg, Assistant Attorney General, 525 Park Street, St. Paul, Minnesota 55155, appeared on behalf of the Minnesota Department of Agriculture (Department); Andrew R. Clark, Kalina, Wills, Woods, Gisvold & Clark, Suite«200, 941«Hillwind Road Northeast, Minneapolis, Minnesota 55432-5964, appeared on behalf of Minneapolis Van and Warehouse Company (Minneapolis Van);
and James«A. DeGrood, 5133«Heritage Hills Drive, Bloomington, Minnesota 55437 filed a Notice of Appearance on behalf of United Fire & Casualty Company (Surety). The Surety was represented at the hearing by Nick Newton, 512 Herold
Drive, Burnsville, Minnesota 55337.

The record of the proceeding closed on November 22, 1993, with the receipt
by the Administrative Law Judge of the final submission of counsel.

This Report is a recommendation, not a final decision. The Commissioner of Agriculture will make the final decision after a review of the record which
may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. Þ 14.61, the final decision of the Commissioner shall not be made until this Report has been made
available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to
file exceptions and present argument to the Commissioner. Parties should contact Elton R. Redalen, Commissioner, Minnesota Department of Agriculture, 90
West Plato Boulevard, St. Paul, Minnesota 55107, (612) 297-2200, to ascertain

the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

The issues to be decided in this proceeding are whether Daniel and Darcie Lidberg made a valid claim against the surety bond of Minneapolis Van and Warehouse Company, Principal, underwritten by United Fire & Casualty Company, Surety, under Minn. Stat. Þ 231.18, subd. 6 (1993 Supp.), and, if so, the proper amount of the claim.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On September 11, 1992, Daniel and Darcie Lidberg were forcibly evicted from their residence, 10760«Grouse Street, Coon Rapids, Minnesota for nonpayment of a mortgage. At the time of the eviction, Darcie Lidberg was at the Coon Rapids address and Daniel Lidberg had been out of town for an extended period. The Lidbergs had in excess of one month's notice that the forcible eviction would occur with the help of the Sheriff's Department on September 11, 1992, if the mortgage payments were not made current. The eviction was conducted by the law firm of Shapiro & Nordmeyer, acting under the authority of the local courts with full legal right to cause the removal of the Lidbergs property from the premises. Shapiro & Nordmeyer represents a number of lenders and conducts evictions for clients in the normal course of its legal business.

2. Minneapolis Van and Warehouse Company is a licensed warehouseman in the State of Minnesota. Approximately one month prior to September 11, 1992, the Company was contacted by Shapiro & Nordmeyer and told to appear at the Lidberg residence on September«11 to re

3. Minneapolis Van and Warehouse Company considered Shapiro & Nordmeyer to be its client. They took all of their instructions from Shapiro & Nordmeyer, who had the legal right to cause the Lidberg property to be removed from the dwelling. Normally, in the event of a repossession, the stored goods are sold at a forced sheriff's sale with the proceeds used to defray storage charges. In the event that the sheriff's sale does not raise sufficient money to pay the storage charges, the balance must be paid by the persons arranging for the transportation, here Shapiro & Nordmeyer. Because transportation is arranged by the agent causing the forcible eviction to occur and because the creditor will be responsible for paying storage charges in the event that a sheriff's sale does not realize sufficient proceeds to pay storage charges, the creditor has an incentive to obtain the lowest possible rate from a moving

company and warehouseman.

4. Minneapolis Van, along with most warehouse movers, subscribes to Tariff 3A, which relates to warehouse storage rates and accessorial charges on household goods. Mpls. Ex. 28. That tariff is on file with the Transportation Regulation Board, and, under the law, must be followed by Minneapolis Van in its business of household goods moving. Rule 2 of that tariff states:

RULE 2

(a) From and after the date of storage, the warehouseman storing household goods shall, on behalf of the Depositor cause the stored goods of the Depositor to be insured at least in the amount of $1.25 per pound per article against loss from any peril covered by standard fire and extended coverage policies. The Depositor shall pay to the warehouseman the cost of such insurance in addition to other warehousing charges.

(b) Provided, however, that the Depositor may declare in writing that the value of the stored goods does not exceed $.60 per pound per article, and if the Depositor shall so declare the value of the goods stored, the Depositor shall be so limited in the recovery of any damage against the warehouseman.

Mpls. Ex. 28, Original page 4.

5. Rule 5 of the same tariff provides:

RULE 5

The responsibility of the warehouseman with respect to the household goods stored hereunder shall be limited to the exercise of ordinary care and diligence by its officers and employees. The warehouseman shall not be liable for loss or damage by the elements, fire, water, heat, frost, damp, dust, moth, rust, rattage, leakage, riot, strikes, or unlawful disturbance of the peace or depreciation due to the lapse of time, ordinary wear and tear or perishable nature of the property, nor for injury to the goods arising from the lack of proper packing, or from packing or unpacking by persons other than its own employees. The warehouseman is not an insurer of the depositor against any loss or damage.

Mpls. Ex. 28, Original page 5.

6. In addition to insurance coverage at $1.25 per pound and the alternative protection at $.60 per pound, goods can be insured for full declared value, if the person causing the property to be placed with the warehouseman agrees to pay the rate for such coverage.

7. The depositor, as noted in Rule 1 of the tariff, is a person that has the lawful possession of the household goods and the legal right and authority to store all of such goods according to the tariff. Mpls. Ex. 28, Original page 4. Hence, for purposes of the tariff contained in Mpls. Ex. 28, the owner of the goods is not necessarily the same person as the depositor of the goods. In this case, while the Lidbergs owne

8. Minneapolis Van prepared a bill of lading and freight bill storage order form and/or warehouse receipt signed and initialed by the employee of Shapiro & Nordmeyer, Cindy Floyd. The lower lefthand portion of the bill of lading and warehouse receipt, contained in Mpls. Ex. 27, includes a statement on the limitation of liability of the carrier/warehouse operator for loss or damage. On the original document, the statement relating to the limitation of liability of the warehouseman is highlighted in pink shading. Mpls. Ex. 27, in the lower lefthand corner, specifically contains a statement by Shapiro & Nordmeyer, through its employee, Cindy Floyd, that the entire value of the shipment does not exceed $.60 per pound and that the responsibility of the warehouseman is limited to that amount. The limitation of liability to $.60 per pound and the declaration of value is both initialed and signed in full by Cindy Floyd, on behalf of Shapiro & Nordmeyer. The bottom of the bill of lading and/or warehouse receipt contained in Mpls. Ex. 27 states specifically that the shipment is subject to the applicable tariff filed with the Minnesota Department of Transportation and/or Agriculture. The contract is signed by Cindy Floyd, an employee of Shapiro & Nordmeyer.

9. In the past, Shapiro«& Nordmeyer had always requested the lowest insurance rate of $.60 per pound. Because of the potential ultimate liability of law firms, on behalf of their creditor clients, for storage charges not recovered, it was Minneapolis Van's observation that law firms conducting an eviction always requested the lowest rate. Shapiro & Nordmeyer gave no specific storage directions to Minneapolis Van regarding any of the household goods or possessions of the Lidbergs.

10. The Minneapolis Van crew proceeded to move the Lidbergs' household goods and possessions from the Coon Rapids location on September 11, 1992. The Minneapolis Van crew prepared the inventory of goods contained in Dept. Ex.«16. That inventory of goods subscribed to by an employee of Minneapolis Van and Cindy Floyd is not a detailed itemization of each item of property moved. It states the larger items and then numbers of cartons, each of which may have included multiple items. The inventory lists "automobile parts" without further itemization.

11. At the time of the forced eviction, Daniel Lidberg had stored in his garage the shell or body of a 1969-1/2 Dodge SuperBee that he was restoring.

The surface condition of the car was as shown in Department's Ex.«6, 7, and 8.
Some portions of the car still had paint, other large portions of the body were
bare metal and, finally, some areas consisted only of dried body filler.
Exhibits 6, 7 and 8 show the automobile with wheels on the body and doors intact. At the time it was moved by Minneapolis Van, however, the car did not
have wheels on the body, at least the left door was missing, and the hood had been removed. The body was on a dolly, as shown in Dept. Exs. 9 and 11. The back window of the vehicle had been placed in the metal window channels by Mr.
Lidberg. It was not, however, cemented securely in place. It would have been
obvious to one viewing the body of the car that someone was in some stage of restoring the vehicle. It is not evident, however, from the configuration of the car body that the vehicle was of any unusual value in its condition as of that time.

12. At the time the vehicle was moved by Minneapolis Van, on the floor of
the interior of the vehicle was a transmission and air cleaner which were appropriate equipment for the vehicle in a restored condition. The parts were
merely placed on the floor of the shell by Mr. Lidberg. They were not otherwise secured to the frame or body of the vehicle. The transmission did not have a protective grease coating. The transmission and air cleaner are singularly valuable "classic" auto parts.

13. Minneapolis Van did not have the equipment to move the 1969-1/2 SuperBee wit

14. When North Star loaded the 1969-1/2 Dodge SuperBee vehicle and began
traveling with it down the highway, the back window blew out because it was not
cemented in place.

15. At the direction of Minneapolis Van, the 1969-1/2 Dodge vehicle and the loaded snowmobile trailer were placed in an outside impound storage lot maintained by Minneapolis Van at its facility in Roseville, Minnesota. This lot is maintained by Minneapolis Van for the storage of disabled and repossessed vehicles. It is surrounded by a fence with a gate and has some security surveillance, at least on weekdays, while the facility is conducting business. No one specifically instructed Minneapolis Van to place the car body
or the loaded trailer in an inside storage space. The Company does provide, at
a different location, inside storage for vehicles and charges significantly more for that storage than it does for normal household goods. In this case, neither the Lidbergs nor Shapiro & Nordmeyer requested inside storage for the vehicle body and neither offered to pay the additional charges for such inside
storage.

16. Prior to placing the 1969-1/2 SuperBee Dodge vehicle in storage, Minneapolis Van covered the body with a shrinkwrap plastic material and left

intact on the body some assorted moving pads that had been used in the transport of the vehicle. Other than placing it inside the storage lot in shrinkwrap, there is no evidence in the record that Minneapolis Van took any other specific precautions with respect to protection of the condition of the vehicle or the integrity of its contents.

17. All of the other household possessions of the Lidbergs were left in the moving trailer which had transported the property to the Roseville facility of Minneapolis Van. The van was parked outside of the warehouse and sealed with normal transport seals. At no time did any of the household possessions of the Lidbergs receive indoor storage from Minneapolis Van.

18. Sometime before the end of September, 1992, Daniel Lidberg visited the Minneapolis Van outdoor lot where his vehicle was stored. He accompanied the operations manager of the warehouse to the site of the vehicle. Mr. Lidberg removed some of the shrinkwrap from the car body and checked its condition. He noticed that there was some surface rust on the unpainted portions of the body due to outdoor weather conditions. At the time of his inspection of the vehicle, before the end of September 1992, the air cleaner and transmission noted at Finding 12 were still in the vehicle. There is no evidence in the record as to whether Mr. Lidberg resecured the shrinkwrap over
the side of the vehicle and open door area before he left. The operations manager of the warehouse did not inspect the vehicle at the time Mr. Lidberg checked its condition. He does not know whether it ever contained an air cleaner and loose transmission.

19. When Mr. Lidberg viewed his vehicle at the end of September 1992, he
did not request that the operations manager of the warehouse place the vehicle
in inside storage and offer to pay the increased storage costs. At the time, such a request would have been beyond Mr. Lidberg's financial capability. Mr.
Lidberg did not tell the operations manager that unusually valuable parts had been placed in the body shell.

20. Sometime in mid-October of 1992, Mr. Lidberg again inspected the vehicle at the Minneapolis Van lot. He came with an individual who, he hoped,
would either buy the vehicle or provide him with a loan to reclaim it from storage. At that time, the car body was rusty. The air cleaner and transmission were still in place on the floor of the vehicle. Again, Mr. Lidberg did not request any alternative indoor storage for the vehicle, offer to pay the increased cost associated with that service or call the presence of
the unusually valuable parts to the attention of the Company.

21. On November 20, 1992, after negotiating with Minneapolis Van, Mr. Lidb

22. On November 21, 1992, Mr. Lidberg came to the outside storage lot of
Minneapolis Van and picked up the 1969-1/2 Dodge SuperBee. On this occasion and on several other occasions when he had visited the lot on weekends, the gate to the lot was open and no attendant was present. No one on any occasion

questioned his legal right to enter the lot or remove the vehicle.

23. When Mr. Lidberg took possession of the 1969-1/2 Dodge SuperBee on November 21, 1992, from the unattended lot of Minneapolis Van, the condition of the vehicle with significant surface rust was as noted in Dept. Exs. 9, 10 and 11. Essentially, the unpainted and unprotected portions of the body were covered with surface rust. Mr. Lidberg also noted that the air cleaner and transmission were missing from the floor of the vehicle.

24. When Mr. Lidberg's goods were delivered to him on November 20 and 21, 1992, he noted on the inventory that the car chassis was missing a four-speed transmission and air cleaner. Dept. Ex. 16. After all of the property was checked by the Lidbergs, they noted damage and missing items as listed in Dept. Ex. 14. The total claim made by the Lidbergs against Minneapolis Van was in the amount of $6,552.92.

25. Minneapolis Van rejected the claim of the Lidbergs as stated in Lidberg Ex. 24, with the exception that a small amount was paid, based on weight, for miscellaneous posters and Minneapolis Star & Tribune newspapers. The Lidbergs have not cashed the settlement check sent by Minneapolis Van. Minneapolis Van refused to pay for the air cleaner and transmission because they were not specifically listed on the inventory contained in Dept. Ex. 16. They refused to pay for the surface rust to the car body because their tariff, as noted at Finding 5, supra, excluded damage from rust and the elements.

26. The rebuilt hemi four-speed transmission weighed approximately 80 pounds and the air cleaner weighed approximately 10 pounds. The 1969-1/2 Dodge SuperBee, at the time of its storage by Minneapolis Van and Warehouse weighed approximately 2,000 pounds. Lidberg Ex. 32; Dept. Ex. 34.

27. At the time the vehicle was placed in storage with Minneapolis Van, the Company had in effect a $25,000 warehouseman's bond, as required by statute, which contained the following provision:

> If said Principal, being duly licensed as provided herein, shall indemnify the owner of goods stored in said warehouse(s) against loss during the period of this bond, shall fully and faithfully perform the duties imposed upon said license(s) and the conditions of this bond, and shall observe the laws of the State of Minnesota and the rules and regulations of the Minnesota Department of Agriculture adopted pursuant thereto, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

Dept. Ex. 17, p. 2. The same bond, however, states that the bond is:

> for the benefit of all persons storing goods, wares, commodities or merchandise (excluding grain and coal storage) in said warehouse(s).

Dept. Ex. 17, p. 2. The surety bond was underwritten by United Fire & Casualty Company, as surety for Minneapolis Van and Warehouse Company, as principal. Such a bond is required by Minn. Stat. Þ 231.17 (1993 Supp.).

28. After receiving the disposition of claim by Minneapolis Van, Mr. Lidberg filed a claim on the bond of Minneapolis Van and Warehouse Company with the Minnesota Department of Agriculture in the amount of $6,552.92. An investigation was conducted by the Department of Agriculture through James H. Gryniewski, Director, Grain Licensing & Auditing Division. His decision, dated June 7, 1993, allowed a claim against the bond in the amount of $2,887.43. The items of recovery allowed were as follows: rust damage to 1969 Dodge SuperBee - $1,987.43; missing four-speed transmission

29. On June 10, 1993, Minneapolis Van and Warehouse Company filed an appeal from a determination of the Department of Agriculture's allowance of the claim and requested the initiation of a contested case proceeding, as authorized by law. Dept. Ex. 21. Neither Daniel nor Darcie Lidberg appealed from the determination of the Department of Agriculture.

30. On August 24, 1993, the Commissioner of the Minnesota Department of Agriculture issued a Notice of and Order for Hearing in the above-captioned matter, initiating a contested case proceeding as authorized by Minn. Stat. Þ«231.18, subd. 6 (1993 Supp.) The Notice of and Order for Hearing was properly served on all interested parties.

31. The reasonable value of the air cleaner at the time of its removal from the vehicle was $500.00. The reasonable value of the reworked hemi four-speed transmission at the time of its removal from the vehicle was $400.00. The reasonable cost of removing the surface rust from the vehicle would be between $1,500 and an amount in excess of $2,000, depending on the depth of the rust and its effect on the body filler that had been used.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Agriculture have jurisdiction in this case pursuant to Minn. Stat. Ch. 231 (1993 Supp.) and Minn. Stat. ÞÞ 14.57 - 14.62 (1992).

2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled. Therefore, the matter is properly before the Administrative Law Judge.

3. The persons claiming under the warehouseman's bond of Minneapolis Van and Warehouse, Darcie and Daniel Lidberg, have the burden to establish the facts at issue, including the validity and amount of their claim, by a preponderance of the evidence. Minn. Rule 1400.7300, subp. 5 (1992).

4. Minneapolis Van and Warehouse Company did not breach its duty of reasonable care as a public warehouseman when it placed the 1969-1/2 Dodge SuperBee car body in their outside impound lot protected only with shrinkwrap.
Neither Shapiro & Nordmeyer nor Mr. Lidberg offered to pay the charges involved
for placing the vehicle body into inside storage.

5. Minneapolis Van and Warehouse Company breached a duty of reasonable care they owed to Shapiro & Nordmeyer, and, ultimately, to Daniel and Darcie Lidberg when they failed to secure the loose auto parts contained in the 1969-1/2 Dodge SuperBee vehicle and placed the vehicle in an unsecure area where such loose parts were subject to theft.

6. The negligence of the Minneapolis Van and Warehouse Company with respect to the storage of the air cleaner and the transmission was not, however, the proximate cause of the loss of the parts. Mr. Lidberg, after viewing the storage condition of the parts on at least two occasions before they were stolen and with knowledge of the conditions under which the parts were being stored, without asking for different or more secure storage and offering to pay for such storage, ratified or acquiesced in Minneapolis Van's storage practices by failing to call the presence of the unusually valuable parts to the attention of Minneapolis Van.

7. Minn. Stat. Þ 231.18, subd. 6 (1993 Supp.) may not be applied retroactively to the Lidberg claim.

8. If authority to hear the Lidberg claim is found by the Commissioner and if the Commissioner finds the claim is valid, it is appropriate to apply the limitations on value of goods stated in the Storage Agreement between Minneapolis Van and Shapiro & Nordmeyer, the Lidbergs' legal agent with authority to enter into the storage contract.

9. Any Finding of Fact more properly termed a Conclusion is hereby expressly adopted as such.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Agriculture deny in its entirety the claim of Daniel and Darcie Lidberg against the warehouseman's bond
of Minneapolis Van and Storage Company.

Dated this 24th day of November, 1993.

__s/_Richard_C._Luis_____
RICHARD C. LUIS
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. Þ 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded; No Transcript Prepared.

MEMORANDUM

At the hearing herein, the Administrative Law Judge stated that the burden of proof was on Minneapolis Van and Warehouse Company to establish that the partial allowance of the claim by the Department of Agriculture was unreasonable. After reviewing the law applicable, the Administrative Law Judge concludes, to the contrary, that the burden of proof is on those asserting a claim against the bond of Minneapolis Van and Warehouse Company to establish by a preponderance of the evidence the propriety of the claim. This is in accordance with Minn. Rule pt. 1400.7300, subp. 5 (1992). Here, the Lidbergs are asserting that a certain action be taken within the meaning of the rule, that is, the recovery of a monetary amount against the warehouseman's bond of Minneapolis Van and Warehouse Company. As such, they have the burden of proof that a recovery in any amount is appropriate. This is the proper placement of the burden of proof since the Administrative Law Judge, in this contested case proceeding, is conducting a de«novo hearing. He does not sit to review the reasonableness of the determination of the Department of Agriculture, but to take evidence on the propriety of the claim of the Lidbergs. Since this is a de_novo hearing, the Lidbergs have the burden of proof regarding the propriety of recovering any sum against the bond of Minneapolis Van and Warehouse Company. In_re_City_of_White_Bear_Lake, 247 N.W.2d 901, 904 (Minn. 1976); Holman_v._All_Nation_Ins._Co., 288 N.W.2d 244, 248 (Minn. 1980).

Although this is a different conclusion than that announced at the hearing, it in no way affects the decision in this case. The evidence upon which the Administrative Law Judge relied to reach the recommendation previously stated was uncontroverted and is the result, largely, of his application of the applicable law to the facts found. Therefore, the Administrative Law Judge does not believe it is necessary to reopen the hearing record to allow the presentation of additional testimony.

The only appeal filed in this proceeding was filed by Minneapolis Van and Warehouse Company against the allowance of a recovery for the 1969-1/2 Dodge SuperBee, the rebuilt transmission and the air cleaner. The Department resolved all of the other claims adversely to Mr. and Mrs. Lidberg and they did not appeal that determination. Hence, with respect to those claimed items of

damage, the action of the Department is final. Even if the Administrative Law Judge were to consider the other claims of the Lidbergs, however, there is no evidence in the record that would support a different decision by the Administrative Law Judge with respect to the other claims than that reached by the Department. Therefore, the balance of this Memorandum will consider the claims for the air cleaner, the transmission and the surface rust to the 1969-1/2 Dodge SuperBee car body.

The receipt of goods by a warehouseman from a person legally entitled to cause them to be stored creates the relationship of bailor and bailee between the warehouseman and the depositor. It is clear that a warehouseman is not an insurer of the goods of the depositor or owner. He owes a duty of reasonable care in the that the car body, which appeared to a noncollector to be of extremely limited value, would have some unusual value to a car collector. One must also recognize the circumstances under which Minneapolis Van and Warehouse was operating. They were dealing with a delinquent debtor, a piece of nonfunctional property which was not readily resaleable, and a significant cost for more protected storage. No one, including the Department, has advanced a legitimate rationale for Minneapolis Van, of its own accord, to undertake expensive alternative storage, for which it had limited or no opportunity for recovery, when the person legally entitled to direct its actions had consistently opted for the least expensive type of storage.

The Administrative Law Judge is also influenced by the fact that Daniel Lidberg controlled the length of time the car body was in storage. It could have been recovered immediately if he had paid the amounts owing. Further, he repeatedly visited the location significantly before he reclaimed the car and paid the amounts due. He visited the car after it had been in storage for less than three weeks and, once again, in the middle of October. On neither occasion does he report requesting indoor storage or offering to pay for such storage. The record shows at that time he was attempting to sell the vehicle to reclaim his household property. Under such circumstances and given the factual situation involved, the Administrative Law Judge does not believe that Minneapolis Van and Warehouse Company breached any duty of reasonable care it owed regarding the storage of the car body.

With respect to the air cleaner and the transmission, the Administrative Law Judge finds that the Lidbergs have established that the parts were in the vehicle at the time it was moved into storage by Minneapolis Van and Warehouse Company. Both Mr. and Mrs. Lidberg testified to that effect. Dept. Ex. 16, which was executed contemporaneously with the removal of the goods from the custody of Minneapolis Van, also contains a notation of the missing parts. Finally, there is some hearsay testimony in the record which corroborates the testimony of the Lidbergs and Exhibit 16. The fact that a transmission and air cleaner are not listed specifically on Exhibit 16 is entirely understandable.

The inventory was prepared by the moving crew from Minneapolis Van. They were removing all of the household goods of the Lidbergs. Under such circumstances, it would be almost impossible, in the time allowed, to make an item-by-item inventory of the goods. Moreover, to an untrained person, an air cleaner and a transmission are, as they were listed, automobile parts. As admitted by the Minneapolis Van employee who testified, the notation "automobile parts" contained on the inventory could well include an air cleaner and a transmission.

Minneapolis Van owed a duty of reasonable care for the safekeeping of the parts on the floor of the 1969-1/2 SuperBee vehicle body. In a number of somewhat similar circumstances when theft occurs, as it did in this case, the negligence of the warehouseman is a question of fact. George_C._Bagley Elevator_Co._v._American_Express_Co., 63 Minn. 142, 65 N.W. 264 (1895); Derosia v._Winona_&_St._Peter_Railway, 18 Minn. 133 (Gil. 119) (1869). In this case, it is apparent that on a number of occasions, the lot which included repossessed cars and car bodies was not locked by Minneapolis Van. People more or less came and went without challenge. It is likely that on some such occasion, after normal business hours, the parts in the 1969-1/2 Dodge SuperBee were stolen. The Administrative Law Judge believes that the failure to safeguard the parts more directly was negligent conduct on the part of Minneapolis Van.

The Administrative Law Judge concludes, however, that the negligence of Minneapolis Van was not the proximate cause of the Lidbergs' loss of the air cleaner or transmission and that the Lidbergs ratified the storage practices of

Given the conclusions of the Administrative Law Judge regarding the inability of the Lidbergs to recover damages for the surface rust to the 1969-1/2 Dodge SuperBee or the loss of the air cleaner and the transmission, no recovery against the surety bond underwritten by United Fire & Casualty Company is appropriate.

The Administrative Law Judge also concludes that a recovery against the surety bond as a result of this contested case proceeding is inappropriate because Minn. Stat. Þ 231.18, subd. 6 (1993 Supp.) may not be applied retroactively to the Lidberg claim. Any claim the Lidbergs had against either Minneapolis Van or the Surety arose no later than the day they retook possession of their goods from the warehouseman, November 20 and 21, 1992. At that time the effects of any claimed negligence by Minneapolis Van were known to the Lidbergs. The claim in this case was also filed with the Department of Agriculture on April 28, 1993. At the time the claim for relief arose, the law

provided:

> Proceedings_before_the_department_against_any_warehouse operator shall be instituted by complainant, verified as pleadings in a civil action, stating in ordinary language the facts constituting the alleged omission or offense. The parties to such proceeding shall be termed, respectively, complainant and respondent. (Emphasis added.)

Minn. Stat. Þ 231.18 (1992).

> If the matter be not adjusted to the satisfaction of the department, it shall set a time and place of hearing and give at least ten days' notice thereof to each party. The parties shall appear either in person or by attorney. The department shall hear evidence and
>
> > otherwise investigate the matter and shall make findings of fact upon all matters involved, and such order or recommendation in the premises as may be just. A copy of such findings and order or recommendation, shall forthwith be served upon each party. No proceedings shall be dismissed on account of want of pecuniary interest in the complainant.

Minn. Stat. Þ 231.21 (1992).

The appeal from a final decision of the Commissioner was to a court of competent jurisdiction. Minn. Stat. Þ 231.26 (1992). A claim against the bond of a warehouseman could not be made in an administrative proceeding; a district court action was necessary:

> When any one licensed to do business as a public warehouse operator fails to perform a duty, or violates any of the provisions of this chapter, any person or corporation injured by such failure or violation may, with the consent of the department and the attorney general, bring an action in the name of the state, but to the person's or corporation's own use, in any court of competent jurisdiction on the bond of such warehouse operator. In such action the person or corporation in whose behalf the action is brought shall file with the court a satisfactory bond for costs, and the state shall not be liable for any costs.

Minn. Stat. Þ 231.34 (1992).

At the time the claim for relief arose, the only remedy available in an administrative proceeding was one directly against the warehouseman. The Commissioner of Agriculture and, derivatively, an administrative law judge conducting a hearing under Minn. Stat. Þ 231.21 (1992), had no authority to hear or approve a bond claim.

Laws of Minn. 1993 ch. 212, effective August 1, 1993, repealed Minn. Stat. Þ 231.21 (1992) and amended Minn. Stat. Þ 231.18 in its entirety to provide an administrative remedy for a bond claim with a contested case hearing. Minn. Stat. Þ 231.18, subd. 6 (1993 Supp.). Since Minn. Laws 1993, Ch. 212 contained no earlier effective date, it became e

In this proceeding, the Department of Agriculture applied the 1993 change previously noted to the Lidbergs' claim which arose in 1992. In his decision of June 7, 1993, Mr. James Gryniewski, Director, Grain Licensing and Auditing Division, Department of Agriculture, allowed a claim against the bond of Minneapolis Van in the amount of $2,887.43. Dept. Ex. 20. The statute in effect at the time, Minn. Stat. Þ 231.18 (1992), provided for a complaint and proceeding against a warehouseman, not a surety. Application of the amendment contained in Minn. Laws 1993, Ch. 212 to the Lidbergs' claim, which arose in 1992, would be an impermissible retroactive application of the 1993 session law.

Minn. Stat. Þ 645.21 states that "[n]o law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." The courts have held that the statute applies to laws relating to substance as well as those relating to procedure. Ekstrom_v._Harmon, 256 Minn. 166, 98 N.W.2d 241 (1959); Cooper_v._Watson, 290 Minn. 362, 187 N.W.2d 689 (1971). In 82 C.J.S, Statutes, Þ 412, a retrospective or retroactive law is defined, in part, as follows:

> . . . A retroactive or retrospective law, in the legal sense, is one which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect of transactions or considerations already past. However, a statute does not operate retroactively merely because it relates to antecedent events, or because part of the requisites of its action is drawn from time antecedent to its passing, but is retroactive only when it is applied to rights acquired prior to its enactment.

In Cooper_v._Watson, 187 N.W.2d at 693, the court cited, with approval, the definition of retrospective laws contained in 50 Am. Jur. Þ 476, which reads:

> A retrospective law, in the legal sense, is one which takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability, in respect of transactions or considerations already past. It may also be defined as one which changes or injuriously affects a present right by going behind it and giving efficacy to anterior circumstances to defeat it, which they had not when the right accrued, or which relates back to and gives to a previous transaction some different legal effect from that which it had under the law when it occurred. Another

> definition of a retrospective law is one intended to affect transactions which occurred, or rights which accrued, before it became operative, and which ascribes to them effects not inherent in their nature, in view of the law in force at the time of their occurrence.

In Chapman_v._Davis, 233 Minn. 62, 45 N.W.2d 822 (1951), the court held that a statute authorizing service of a summons and complaint on a nonresident by serving the commissioner of highways and mailing a notice of such service and a copy of the summons and complaint to the nonresident defendant at the defendant's last known address did not apply to actions arising out of accidents which occurred before the statute was promulgated, even though those actions were commenced after the statute was promulgated. The court held that section 645.21 applies to all laws without distinction between laws relating to procedure and those pertaining to substantive rights. Likewise, it has been held that a statute authorizing new remedies for the enforcement of wage and hour violations occurring before the statute was enacted do not apply to the prior violations. Matter_of_Wage_&_Hour_Violations_of_Holly_Inn, 386 N.W.2d 305 (Minn. App. 1986). In that case, a statute was enacted that a

In a cogent discussion of the law of retroactive statutory application, the court in Holly_Inn, supra, stated:

> In Minnesota, however, the distinction between statutes that create a new right or wrong and statutes that create a new remedy has not been followed. In an early case the supreme court indicated that a statute which changed the parties with standing to bring a lawsuit would be applied to prior, as well as subsequent, contracts or transactions and resulting actions. See Tompkins_v._Forrestal, 54 Minn. 119, 125, 55 N.W. 813, 814 (1893). However, in Chapman_v._Davis, 233 Minn. 62, 45 N.W.2d 822 (1951), the court refused to apply the Tompkins ruling, indicating that at the time of Tompkins Minn. Stat. Þ«645.21 had not been enacted. Davis, 233 Minn. at 65 n.«2, 45 N.W.2d at 824 n. 1. Section 645.21 provided that "[n]o law shall be construed to be retroactive unless clearly and manifestly so intended . . ." The Chapman court applied this language, which is identical to the current version of section 645.21, to a situation in which a service of summons statute had been amended, and concluded that the statute should not be applied retroactively. Id. at 65-66, 45 N.W.2d at 824. Chapman indicated that section 645.21 applies without difference to procedural and substantive laws. Id. at 65, 45 N.W.2d at 824 (citing Ogren_v._City_of_Duluth, 219 Minn. 555, 18 N.W.2d 535 (1945)). The Chapman court also noted that section 645.31 pertaining to amendatory laws provides: "[T]he new provisions [of an amended statute] shall be construed as effective only from the date when the amendment became effective." Id. (citing Minn. Stat. Þ«645.31).

> Citing Chapman with approval, the court in Cooper_v. Watson, 290 Minn. 362, 187 N.W.2d 689 (1971), held that a rule requiring a written agreement as a prerequisite to an indemnity claim should not be applied retroactively. Cooper, 290 Minn. at 370, 187 N.W.2d at 694. The Cooper court reiterated the rule that section 645.21 applies without distinction to laws relating to procedure and those governing substantive rights, and stated that:
>
> > Another definition of a retrospective law is«one«intended_to_affect_transactions_which occurred,«or_rights_which_accrued,_before it«became«operative,_and_which_ascribes_to them«effects_not_inherent_in_their_nature,_in«view«of the_law_in_force_at_the_time_of_their«occurrence.
>
> Id. at 369, 187 N.W.2d at 693 (emphasis supplied by Cooper court) (quoting 50 Am. Jur., Statutes Þ 476).
>
> In Muckler_v._Buchl, 276 Minn. 490, 150 N.W.2d 689 (1967), the court held that an increase in the ceiling of recovery for a wrongful death action would not be applied retroactively. Buchl, 276 Minn. at 501, 150 N.W.2d at 697. The supreme court has consistently followed its ruling that, whether a statute affects substantive or procedural rights, it may not be applied retroactively unless the legislature so intended. Thus, although the statute in the present situation changed only the procedure for recovery against an employer, the above cases from our supreme court indicate that, in the absence of clear legislative intent, the 1985 language cannot be applied retroactively.

386 N.W.2d at 312-13.

Similar statements are contained in Lovgren_v._Peoples_Electric_Co.,_Inc., 380 N.W.2d 791, 795 (Minn. 1986); and Thompson_Plumbing_v._McGlynn_Companies, 486 N.W.2d 781, 785-86 (Minn. App. 1992).

On the

The Administrative Law Judge is aware of the Report of the Administrative Law Judge and the Decision of the Commissioner in Claim_Against_Surety_Bond_of National_Warehouse,_Inc._(Principal),_United_Fire_&_Casualty_Company_(Surety) by_Claimant_Old_Wessex,_Limited, OAH Docket No. 4-0400-6976-2, in which administrative recovery against a grain warehouseman's bond was allowed. In that case, however, the Administrative Law Judge and the Commissioner clearly had jurisdiction under Minn. Stat. Þ 232.22, subd. 7 (1992). That proceeding also apparently involved stipulated jurisdiction:

> This bond claim was initially commenced by Old Wessex pursuant to Minn. Stat. ch. 231. However, rather than proceed pursuant to ch. 231, the parties and the Department of Agriculture determined that a contested case

> under ch. 14 would provide a more expeditious remedy. Consequently, the parties stipulated to a hearing before the undersigned pursuant to Minn. Stat. ch. 14 and the contested case rules adopted by the Minnesota Office of Administrative Hearings.

Findings_of_Fact,_Conclusions_of_Law_and_Recommendation,_Old_Wessex, April 1, 1993, p. 1.

If, contrary to the recommendation of the Administrative Law Judge, the Commissioner applies Minn. Stat. Þ 231.18, subd. 6 (1993 Supp.) retroactively and finds a breach of duty of reasonable care owed by Minneapolis Van to the Lidbergs, it would be appropriate to apply the value limitations agreed to in the contract of storage. Although the bond form references the owner of the goods it is clear that it was meant to apply to the depositor. See Finding 27; Dept. Ex. 17, p. 2. Moreover, the provision of Minnesota Statutes which requires a surety bond also references the depositor. The Administrative Law Judge concludes that Shapiro«&«Nordmeyer, in this transaction, were the agents of the Lidbergs by operation of law. Shapiro & Nordmeyer had the legal right to cause the goods to be moved and stored. In the exercise of that authority, they stipulated to the value of the goods being no more than 60 cents per pound per article. That stipulation of their agent is binding on the Lidbergs. If Shapiro & Nordmeyer were in any way negligent in agreeing to that valuation, the Lidbergs may have a claim against the law firm. That should not, however, affect the rights of Minneapolis Van or the Surety, who in good faith lawfully dealt with Shapiro & Nordmeyer.

Under the value agreed to by the agent of the Lidbergs, any recovery should not exceed 60 cents per pound for the weights found by the Administrative Law Judge in Finding 26, supra. As a result of that Finding, recovery would be limited as follows: air cleaner, $6.00; transmission, $48.00; and 1969-1/2 Dodge SuperBee, $1,200.00. Although there is some dispute in the record regarding the weight of the 1969-1/2 Dodge SuperBee, the Administrative Law Judge credits the testimony of Daniel and Darcie Lidberg and the weight tickets which were entered into the record. The Administrative Law Judge believes it is more probable than not that the 1969-1/2 Dodge SuperBee and the trailer were not part of one towing load. Since that is the case, the most probable weight of the 1969-1/2 Dodge SuperBee is approximately 2,000 pounds.

R.C.L.